

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

DAVID G. SCHAFER,	)	
	)	
Claimant,	)	<b>IC 02-009806</b>
	)	<b>02-018287</b>
v.	)	
	)	
SMITH GROUP INTERNATIONAL, dba	)	
TRANSTECTOR SYSTEMS, INC.,	)	
	)	
Employer,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSION OF LAW,</b>
and	)	<b>AND RECOMMENDATION</b>
	)	
AMERICAN PROTECTION	)	Filed February 17, 2006
INSURANCE COMPANY,	)	
	)	
Surety,	)	
	)	
Defendants.	)	
	)	

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Sandpoint, Idaho, on May 11, 2005. Claimant was present and represented by Joseph E. Jarzabek of Sandpoint. Eric S. Bailey of Boise represented Employer/Surety. Oral and documentary evidence was presented. The record remained open for the taking of one post-hearing deposition. The parties submitted post-hearing briefs and this matter came under advisement on December 21, 2005.

**ISSUE**

The issue to be decided is whether Claimant's left carpal tunnel syndrome is compensable.<sup>1</sup>

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<sup>1</sup> For the first time in his opening brief, Claimant requests an award of attorney fees for Surety's frivolous defense of this claim. The Referee will not consider this issue as it was not identified in the Notice of Hearing or at the hearing itself.

## **CONTENTIONS OF THE PARTIES**

Claimant contends he suffered a compensable left carpal tunnel syndrome due to overusing his left upper extremity during the treatment of his compensable right carpal tunnel syndrome and requests further medical treatment for the left.

Defendants contend that because Claimant failed to timely report any problems with his left upper extremity and because he quit his job before the left carpal tunnel problem resulted in diagnosable carpal tunnel syndrome, his claim must fail.

## **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant, Ronald Neumann, and Colleen McGruder-Krajack, presented at the hearing;
  2. Claimant's Exhibits 1-20 admitted at the hearing;
  3. Defendants' Exhibits 15-22 admitted at the hearing;
  4. The pre-hearing depositions of: Claimant taken by Defendants on October 9, 2003; Ronald Neumann taken by Claimant on October 9, 2003, and July 23, 2004; Michael Shawn Thompson, and Mark San Filipino, taken by Claimant on July 23, 2004;
  5. The post-hearing deposition of Michael T. Phillips, M.D., taken by Defendants on June 16, 2005;
- Claimant's objections at page 10 of Claimant's deposition and at page 27 of Dr. Phillip's deposition are sustained; and,
6. A June 10, 2005 letter from Roger C. Duntelman, M.D., to Defendants' attorney admitted post-hearing on Claimant's motion to supplement the record.

After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

### **FINDINGS OF FACT**

1. Claimant was 51 years of age at the time of the hearing. He worked for Employer as a quality control inspector. As such, Claimant electronically tested diodes that required fine finger manipulation in terms of grasping small items on a continuous basis during the actual testing of the product.

2. In November of 2002, Claimant began experiencing problems in his right upper extremity when he was required to test an extraordinarily large quantity of diodes. In a November 8, 2002, accident report contained within Claimant's personnel file (Exhibit 1 to Ronald Neumann's October 9, 2003, deposition), Claimant reported: "testing diode cells, increase pain **both** wrists." Emphasis added. On November 18, 2002, a physician at Kootenai Medical Center Occupational Health diagnosed Claimant as having right wrist tendinitis and restricted Claimant to left hand work only. Surety accepted the claim.

3. Claimant testified that he terminated his employment on December 3, 2002, partly for personal reasons and partly for the difficulty in performing his work left-handed.

4. On December 11, 2002, Claimant first saw Roger C. Dunteman, M.D., who diagnosed right ulnar neuritis and right wrist tendinitis. He restricted Claimant to left-handed work only. On February 7, 2003, Dr. Dunteman modified his diagnosis to right carpal tunnel syndrome and scheduled a right carpal tunnel release for February 21. However, the surgery was cancelled the day before, as Surety wanted a second opinion.

5. On March 12, 2003, Claimant saw Michael T. Phillips, M.D., for the second opinion. Dr. Phillips related Claimant's condition to his work and agreed with Dr. Dunteman's recommendation for surgery, which was accomplished on March 20, 2003.

6. Claimant was also experiencing similar problems on the left during this time, especially after he was restricted to left-handed work. Claimant first informed Dr. Dunteman of his left-sided symptoms on April 1, 2003, when he noted: "He still complains of pain in the left wrist, which he did have approximately two weeks ago." Claimant's Exhibit 8. There is no indication that Dr. Dunteman treated Claimant for any left wrist problems at that time.

7. On May 7, 2003, Dr. Dunteman definitively diagnosed left carpal tunnel syndrome and recommended a nerve conduction study to either rule in or rule out that diagnosis. Surety denied authorization for that study.

### **FURTHER FINDINGS OF FACT AND DISCUSSION**

As in industrial accident claims, an occupational disease claimant must prove a causal connection between the condition for which compensation is claimed and the occupation to a reasonable degree of medical probability. Langley v. State of Idaho, Special Indemnity Fund, 126 Idaho 781, 786, 890 P.2d 732, 737 (1995).

8. For the following reasons, the Referee finds Claimant's left carpal tunnel to be compensable either as an occupational disease or as a compensable consequence of Claimant's accepted right carpal tunnel syndrome.

9. Claimant informed Dr. Phillips that he was also experiencing left-sided symptomatology. Dr. Phillips opined in his March 12, 2003, report that Claimant ". . . has developed similar symptoms in the left wrist due to 'overuse' to protect the right upper extremity." Claimant's Exhibit 13. Claimant credibly testified that his left-sided symptoms

gradually increased as he was forced to use his left upper extremity in his work and activities of daily living as his right upper extremity was being treated. The Referee is unpersuaded that because Claimant quit working in December of 2003, his left-sided symptomatology must have developed after that time and is not Surety's responsibility. Had Claimant not been on work-related restrictions for his right wrist, he would not have been required to overuse his left hand, wrist, and arm regardless if he was working or not.

10. On September 20, 2005, this Referee signed an order granting Claimant's motion to supplement the record with a June 10, 2005, letter from Dr. Duntelman to Defendants' counsel. Dr. Duntelman wrote: "I believe that Mr. Schafer's left upper extremity symptoms and signs consistent with carpal tunnel syndrome are related to his heavy use of the left arm prior to and while recovering from his right carpal tunnel surgery."

11. The Idaho Industrial Commission has adopted the "compensable consequence" doctrine discussed in Professor Larson's treatise on workers' compensation. This doctrine provides that when the primary injury (right carpal tunnel syndrome) is shown to have arisen out of and in the course of employment (Surety accepted the right carpal tunnel claim), every natural consequence that flows from the injury (overuse of the left) likewise arises out of and in the course of employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional conduct (not applicable here). While Larson's discussion of the doctrine pertains to "injury," the Commission's application of the doctrine clearly includes occupational diseases like overuse syndrome. See, *Quenton* 2003, IIC 0244 (2003) (left leg deep thrombosis from inactivity was compensable following compensable right leg injury). For a sampling of previous Commission cases recognizing the compensable consequences doctrine see, *Castaneda v. Idaho Home Health, Inc.*, 1999 IIC 0538 (July 1999); *Martinez v. Minidoka*

*Memorial Hospital*, 1999 IIC 0262 (February 1999); and, *Offer v. Clearwater Forest Industries*, 2000 IIC 0956 (October 2000).

12. The Referee finds that Claimant's left carpal tunnel syndrome is a compensable consequence of overusing his left hand, wrist, and arm while being restricted to left-handed work only during the treatment he was receiving for his compensable right carpal tunnel syndrome.

13. The Referee finds in the alternative that Claimant's left carpal tunnel syndrome is compensable as an occupational disease as was his right carpal tunnel syndrome. Employer was aware in November 2002 that Claimant was complaining of bilateral wrist pain, right worse than left, however, that information was not conveyed to Dr. Phillips prior to his March 12, 2003, examination. In his deposition, Dr. Phillips was provided the following hypothetical question:

Q. (By Mr. Jarzabek): Okay. Doctor, is it reasonable to expect that – I'm going to give you a hypothetical now, because I know that the insurance company apparently has not provided, for whatever reason, those reports that referenced that came from early November. If we accept that as a truism, that Mr. Schafer, in early November, on at least two occasions per written documentation, was complaining of pain in both his left and right wrists, is it reasonable to assume that the same work that caused the problems at those times, at that time with the right wrist also caused the problem with the left wrist, if in fact he was reporting in November this pain?

A. Yes. If he'd told me that, I would think that would be reasonable.

Dr. Phillips' Deposition, pp. 47-48.

14. The Referee finds that Claimant's left carpal tunnel syndrome is the result of a compensable occupational disease. If Claimant contracted carpal tunnel on the right by doing testing with both hands and Surety accepted the claim, it is only reasonable that Claimant developed carpal tunnel on the left by continuing to test with only that hand even if he did quit shortly after he first complained of left-sided symptoms.

## CONCLUSION OF LAW

1. Claimant's left carpal tunnel syndrome is compensable.

## RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusion of Law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this \_\_15<sup>th</sup>\_\_ day of \_\_February\_\_, 2006.

INDUSTRIAL COMMISSION

\_\_\_\_\_/s/\_\_\_\_\_  
Michael E. Powers, Referee

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Assistant Commission Secretary

## CERTIFICATE OF SERVICE

I hereby certify that on the \_\_17<sup>th</sup>\_\_ day of \_\_February\_\_, 2006, a true and correct copy of the **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

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\_\_\_\_\_/s/\_\_\_\_\_